IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 172

MINNIE REESE RICHARDSON WRAGG,

Petitioner,

versus

FEDERAL LAND BANK OF NEW ORLEANS,

Respondent.

BRIEF OF RESPONDENT, FEDERAL LAND BANK OF NEW ORLEANS.

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OPINIONS.

Opinion of the District Court for the Northern Division of the Middle District of Alabama written by Judge Murphree sitting specially, was filed August 6, 1940 and appears as Pages 41-47 of the record. It is reported in 34 Fed. Supp. 374.

Opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed February 25, 1942, appears at pages 57-60 of the record, and is reported in 125 Fed. (2d) 1003.

STATEMENT OF THE CASE.

The facts are not in dispute but we think a more complete statement of them than is contained in Petitioner's brief is essential.

In 1934 Respondent, Federal Land Bank of New Orleans, sold and conveyed to Petitioner about 138 acres of land in Elmore County, Alabama, and to secure the purchase price of Three Thousand Eight Hundred Fifty-Seven and No/100 ($3,857.00) Dollars, took from her a mortgage payable in annual installments over a period of twenty years, with interest at the rate of 5 per cent per annum.

In 1937, nothing having been paid on the debt, either interest or principal (except $250.00 rental which Respondent collected from tenants for 1933 and 1934 and applied on the debt as per agreement of the parties), Respondent filed its bill in the Federal District Court sitting in Equity to foreclose its mortgage. Some effort at defense was made but a decree of foreclosure was rendered ascertaining the amount of the debt and appointing a special Master to conduct the sale. The property was advertised for sale.

Whereupon on October 16, 1937 Petitioner filed her petition as a farmer debtor under the provisions of Section 75 of the Bankrutcy Act, 11 USCA 203, seeking merely an extension or composition (R. 4) and the sale of the land was, on her motion, temporarily stayed. The schedules accompanying her petition showed that she owned no property other than this land (R. 6) and that she was hopelessly insolvent. (R. 6.)

The petition was referred to a special Conciliation Commissioner, (R. 11) where proceedings, including the taking of testimony, were had in the regular way. The debtor filed an offer of composition and extension which was accepted by the unsecured creditors, but rejected by the Federal Land Bank of New Orleans, the only secured creditor. (R. 12-15.) Having secured the acceptance of her proposal by a majority in number and amount of the creditors, the debtor filed an application for confirmation thereof. After a hearing on this motion and due consideration of the evidence (not set out in the record) the Commissioner reported to the Court on December 16, 1937, recommending that the debtor's proposal not be approved. (R. 14.)

In his report the Commissioner said in part:

> "Upon consideration, it is my opinion from the testimony that the proposal of the said farm debtor does not include an equitable and feasible method of liquidating the claim of the secured creditor, and of her financial rehabilitation. The evidence further shows that the reasonable value of the land does not exceed the indebtedness secured by the mortgage on the land, and the offer to pay $125.00 per year rent for the land, which the testimony shows is less than its yearly rental value, will not give a fair return on the mortgage indebtedness during the proposed extended period." (R. 16.)

The report of the Commissioner coming on to be heard by the District Court was, in all respects, approved. (R. 18.)

At this hearing Counsel for the debtor made oral request of the Court for fifteen days within which to amend debtor's original petition and pray to be adjudged a bankrupt. The Court being of the opinion that the debtor was not entitled to be adjudicated a bankrupt under the provisions of sub-section (s) of Section 75, nevertheless allowed fifteen days within which she might be adjudicated a voluntary bankrupt under the general bankruptcy law, if she so desired, but specified that upon her failing so to do, the case would stand finally dismissed out of Court at the expiration of fifteen days. All of this is included in the Order approving the Commissioner's report. (R. 18.)

The debtor did not file any petition to be adjudged a bankrupt and at the end of the fifteen-day period the farmer debtor proceeding stood dismissed—as of January 20, 1938. The debtor attempted to appeal to the Circuit Court of Appeals in *forma pauperis*, but the District Court certified that, in its opinion, the appeal was not taken in good faith (R. 22) and leave to appeal in *forma pauperis* was denied. 95 Fed. (2d) 252. Petition for *certiorari* was likewise denied by this Court. 305 U. S. 595, 83 L. Ed. 377. Therefore, no appeal was perfected.

After the time for appeal had lapsed the District Court sitting in Equity directed its special Master to carry out the decree of sale in the foreclosure case which had been suspended during the farmer debtor proceeding. The special Master completed the sale March 12, 1938, and Respondent became the purchaser of the property.

April 21, 1938, the Court entered a decree in the foreclosure proceedings confirming the sale (some modifica-

tion in Petitioner's favor affecting the amount of the bid) and directed the special Master to execute a deed to Respondent and place it in possession of the property, which was done. (R. 33.)

April 3, 1939, more than a year after Petitioner's original farmer debtor proceeding stood dismissed and when there were, of course, no proceedings whatever pending in the Bankruptcy Court and the title to the property had passed out of the debtor and no longer belonged to her, Respondent entered into a binding contract of sale and conveyed this property to one Storrs for a consideration of Three Thousand Five Hundred and No/100 ($3,500.00) Dollars, part in cash and the balance on terms as provided in the contract. (R. 35.)

March 11, 1940 Petitioner attempted to reopen the farmer debtor proceedings by a petition filed in the District Court. (R. 24.) This was two years, two months and seven days after the dismissal and closing of the farmer debtor proceeding, two years (lacking one day) after the title to the property had passed from Petitioner, and eleven months and eight days after Storrs had been put in possession of the property under the contract of sale on which he had paid a substantial part ($700.00) of the purchase price. (R. 29.)

The only grounds alleged for reopening the case were: (1) that Petitioner's case had not been fully administered, and (2) "under the changed conditions and interpretations of said Act she is entitled to have her relief under the provisions of Section 75 of the Bankruptcy Act; that she

will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors, and if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75." The prayer was in the alternative that (1) her case be reinstated and rereferred to the Referee or Conciliation Commissioner, or (2) that she be allowed to proceed anew on the new petition with the "former schedules and information" incorporated therein by reference.

To this petition Respondent filed its verified answer (R. 25-32) setting out in detail the facts and challenging Petitioner's right to have the bankruptcy proceeding reinstated after so long a time without alleging or showing any changed circumstances or other reasons therefor especially in view of the rights of its contract Vendee, Storrs, which had vested in the *interim*.

Judge Kennamer now recused himself. The matter was submitted by agreement to Judge Murphree of the Northern District upon the record, the verified petition and the verified answer. (R. 40-41.) On August 6, 1940, Judge Murphree rendered a decree denying the petition (R. 48), the basis of his decree being set out in a written opinion. (R. 41-47.) 34 Fed. Supp. 374. It was from this decree that the appeal was prosecuted to the Circuit Court of Appeals for the Fifth Circuit. (R. 49.)

February 25, 1942 the Circuit Court of Appeals affirmed the decree of the District Court (R. 57) 125 Fed. (2d) 1003.

RULINGS OF THE COURT BELOW.

Under this heading it is said in Petitioner's brief, page 5, that the District Court declined to reinstate Petitioner's proceeding under Section 75, "holding that the petition was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb." We wish to point out that the basis for the Court's action was much broader than is indicated by this statement. In the opinion (34 Fed. Supp. 374) it is said:

> "The rights of Courts of Bankruptcy to re-open and reinstate cases closed improvidently or before a full administration thereof has long been recognized and practiced. There are three essential elements on which such orders must be based. There must be a seasonable and diligent application. There must be good cause existing justifying the re-opening of the case in the sound discretion of the Court. The Court must be satisfied that no intervening rights have vested which it would be inequitable and unjust to disturb. Wayne Gas Company v. Owens Company, 300 U. S. 131, 81 L. Ed. 557.
>
> "Petitioner does not set forth or offer any new or changed condition or proposal except as she avers:
>
> "'Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors

> and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75.'
>
> "The Court is of the opinion that petitioner has not met the requirements laid down by Wayne Gas Company v. Owens Company, supra; and that her petition should therefore, be dismissed."

We find no objection to Petitioner's statement with respect to the ruling of the Circuit Court of Appeals, except we disagree with the conclusion that it is based on "different reasons" from the District Court's decision. We think the two harmonious.

SUMMARY OF ARGUMENT.

Proposition I.

The order of the District Court of August 6, 1940, dismissing the petition to reopen the proceeding under Section 75 of the Bankruptcy Act was not appealable, and this Court should not review the action of the Circuit Court of Appeals in affirming it.

Proposition II.

Whether or not the order of the District Court denying a rehearing was properly the subject of appeal, it was correct and its affirmance by the Circuit Court of Appeals was correct.

1. The petition for rehearing, dated March 11, 1940, was addressed to the sound discretion of the District Court

under its general equity powers—not under Section 2 (8) of the Bankruptcy Act.

2. Even if the propriety of the District Court's action in denying the petition for a rehearing was to be determined under Section 2 (8) of the Bankruptcy Act—and if the decision of the Circuit Court of Appeals is to be considered as affirming the District Court's action taken under this sub-section—the action of the Circuit Court of Appeals in affirming the denial of the petition is proper and unassailable.

Proposition III.

The statutory right of redemption in Alabama is not "real or personal property or any equity or right in any such property" as contemplated by Section 75(n) of the Bankruptcy Act, does not come into the jurisdiction of the Bankruptcy Court upon the filing of a farmer debtor proceeding under Section 75, and may not be extended by such a proceeding.

1. The petition to reopen or refile was not adequate to begin a new proceeding under Section 75 of the Bankruptcy Act.

2. Even if the petition could be considered adequate, it sought only relief under sub-sections (a)-(r) which had already been accorded debtor; hence the matter was *res judicata*.

3. Even if the petition were adequate and the matter were not *res judicata* the petition was properly denied,

since a mortgagor after foreclosure in Alabama, does not have a property right on which to base a proceeding under Section 75.

ARGUMENT.

Proposition I.

The Order of the District Court of August 6, 1940, Dismissing the Petition to Reopen the Proceeding Under Section 75 of the Bankruptcy Act was not Appealable, and this Court should not Review the Action of the Circuit Court of Appeals in Affirming it.

January 4, 1938, the proceeding under Section 75 of the Bankruptcy Act was finally dismissed by an Order of the District Court (effective as of January 20, 1938) (R. 18), and no appeal was perfected. This is freely admitted in the very first paragraph of Petitioner's Argument on Page 8 of her brief.

March 11, 1940,—two years, two months, and seven days later—a petition for reopening and rehearing was filed (R. 24) which was denied by an Order dated August 6, 1940, (R. 41). This petition for a rehearing was addressed to the sound discretion of the Court and the Order denying it was not appealable.

This rule seems to have been well established at the time it was followed by this Court in the case of *Brockett vs. Brockett*, 2 How. 238, 11 L. Ed. 251, in the year 1844

and has been adhered to in an unbroken line of decisions since that date. In that case, after a final decree and during the same term, a petition was filed by the defendants to have the final decree opened for certain purposes; the Court took cognizance of the petition and referred it to a Master; and upon the coming in of the Master's Report the Court refused to open the final decree. An appeal was taken from this refusal as well as from the final decree. In considering a motion to dismiss the appeal this Court, speaking through Mr. Justice Story, said:

> "The next ground is, that an appeal has been taken from the refusal of the Court below to open the former decree rendered for the Appellant. It is plain that no appeal lies to this Court in such a matter, as it rests merely in the sound discretion of the Court below. And if this had been the sole appeal in the case, the appeal must have been dismissed."

The motion to dismiss the appeal was overruled because the appeal from the original dismissal order was taken within ample time but the Court made it clear that no appeal would lie from an order denying a petition to reopen a case.

In the case of *Conboy v. First National Bank of Jersey City*, 203 U. S. 141, 51 L. Ed. 128, a bankruptcy case, decided in 1906, the facts were as follows:

January 23, 1905, the Circuit Court of Appeals entered an order sustaining an order of the District Court affirming the order of a Referee in allowing the claim of First National Bank of Jersey City against the bankrupt's estate.

May 8, 1905, the Trustee filed a petition for rehearing which was denied. An appeal was perfected to this Court. Respondent made the point in this Court that no appeal would lie from the order denying the petition for a rehearing, to which Appellant countered that since the petition was duly considered and passed upon by the Court, the order disposing of it was appealable even though the petition was denied; or, that the order of January 23, 1905, had not become final until the petition for rehearing was denied. The Court held:

> "No appeal lies from orders denying petitions for rehearing, which are addressed to the discretion of the court and designed to afford it an opportunity to correct its own errors. Brockett v. Brockett, 2 How. 238, 17 L. ed. 251; Wylie v. Coxe, 14 How. 1, 14 L. ed. 301. Appellant might have made his application for rehearing and had it determined within the thirty days, and still have had time to take his appeal. But he let the thirty days expire, as it did February 22, 1905, and did not file his petition until May 8, 1905. The right of appeal had then been lost and appellant could not reinvest himself with that right by filing a petition for rehearing.
>
> "The cases cited for appellant, in which it was held that an application for a rehearing, made before the time for appeal had expired, suspended the running of the period for taking an appeal, are not applicable when that period had already expired. 'When the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter.' Credit Co.

v. Arkansas C. R. Co. 128 U. S. 258, 261, 32 L. ed. 448, 440, 9 Sup. Ct. Rep. 107, 108. . . .

"The petition was denied. Whether it could have been granted in view of the terms and spirit of the bankruptcy act, or the effect, if it had been, we are not called upon to discuss."

The most recent statement of this rule by this Court that we have seen is found in the case of *Wayne United Gas Company v. Owens-Illinois Glass Company*, 300 U. S. 131, 81 L. Ed. 557, decided in 1936. That case involved a proceeding for reorganization of a corporation under Section 77B of the Bankruptcy Act (now included in Chapter 10). (11 USCA 501-676.) The petition was dismissed on the motion of creditors. After a short time the Petitioner filed a petition to reopen the case. The Court, finding that good cause existed, entered an order reopening the case. After a further hearing, however, it entered an order reaffirming its former decision and dismissing the proceeding. An appeal was taken to the Circuit Court of Appeals where it was decided that the District Court did not have the power to reopen the case after the right of appeal had expired, and thus renew the right of appeal. This Court granted *certiorari* and in holding that a District Court has the right, in its discretion to reopen such a case under certain conditions, said:

"The granting of a rehearing is within the Court's sound discretion, and a refusal to entertain a motion therefor, *or a refusal of the motion, if entertained*, is not the subject of appeal." (Italics ours.)

For this statement the Court cited the following authorities:

> "Brockett v. Brockett, 2 How. 238, 11 L. ed. 251; Steines v. Franklin County, 14 Wall. 15, 20 L. ed. 846; Hardin v. Boyd, 113 U. S. 756, 28 L. ed. 1141, 5 S. Ct. 771; Boesch v. Graff, 133 U. S. 697, 33 L. ed. 787, 10 S. Ct. 378; San Pedro & C. del A. Co. v. United States, 146 U. S. 120, 36 L. ed. 911, 13 S. Ct. 94."

Since the decision in the *Wayne* case ,the Circuit Courts of Appeals in the Sixth and Tenth Circuits, have had occasion to pass upon this question in cases arising under Section 75 of the Bankruptcy Act, which were virtually on "all fours" with the case at bar as to the facts.

In the Tenth Circuit the case of *Mintz v. Lester*, 95 Fed. (2d) 590 was decided March 16, 1938. The pertinent facts were: December 20, 1935, the District Court, upon the motion of certain creditors and after a hearing, dismissed the proceeding. April 21, 1937, the debtor filed a motion to reinstate, seeking a rehearing upon the motion to dismiss and a reconsideration of the action of the Court in dismissing the proceedings. May 10, 1937, the trial court entered its order denying the motion to reinstate. June 14, 1937, the debtor filed a motion in the Circuit Court of Appeals seeking an appeal from the District Court's denial of her petition for a rehearing, and the appeal was granted.

Relying on the *Wayne* case the Court held:

> "Likewise, the order of May 10, 1937, was not appealable. The petition to reinstate in effect sought a reconsideration of the court's action in

> dismissing the proceeding by its order of December 20, 1935,—a rehearing of the motion to dismiss by a motion filed long after the time for appealing from such order had expired. A party may not avoid the effect of the statute limiting the time within which an appeal may be taken from an order, by filing after the time for appeal from such order has expired, a motion for rehearing or a motion to vacate the order and appealing from the order denying the motion for rehearing or the motion to vacate."

In the Sixth Circuit the question was presented in the case of *Chapman v. Federal Land Bank of Louisville*, 117 Fed. (2d) 321, decided January 14, 1941. There were two of these cases, Nos. 8400 and 8720. No. 8400 being duly appealed within the time allowed by law, we shall notice only No. 8720. The debtor's petition under Section 75 was filed July 18, 1938. Early in the proceedings motions were made by certain creditors to dismiss the proceedings and to authorize foreclosures in the State Court. The debtor filed an amended petition asking to be adjudicated a bankrupt under sub-section (s) but the Court ordered that this petition be held in abeyance until the motions to dismiss were disposed of. July 29, 1939, an order was entered over the objection of the farmer dismissing the proceeding, withdrawing all stay orders, etc. February 28, 1940, the debtor filed a petition for rehearing grounded on three decisions of this Court which had been rendered since the order of dismissal, namely, *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, 60 S. Ct. 221, 84 L. ed. 176; *Gray v. Union Joint Stock Land Bank of Detroit*, 308 U. S. 523; 60 S. Ct. 291, 84 L. ed. 443; *Morrison v. Fed-*

eral Land Bank, 308 U. S. 524, 60 S. Ct. 292, 293, 84 L. ed. 443.

Appellees made the point that an appeal would not lie from the order of June 19, 1940, denying the petition to rehear, which was filed seven months after entry of the order of dismissal. The Court held that the case fell precisely within the language of the *Wayne* case and dismissed the appeal.

We desire to point out particularly that the petition for rehearing in this case was filed upon substantially the same basis as the petition for rehearing in the case at bar. The Court entertained jurisdiction of the petition, considered it fully, made and signed a memorandum of conclusions, and ordered that the petition be dismissed, which is the exact course of the petition for rehearing in the case at bar. The fact that the Court considered the petition, therefore, does not make its order denying it appealable, but as was stated in the *Wayne* case ". . . a refusal of the motion, if entertained, is not the subject of appeal."

Therefore, the District Court's order of August 6, 1940, denying the petition to reopen the proceedings under Section 75 was not appealable, and the affirmance of that order by the Circuit Court of Appeals should not be reviewed by this Court.

Proposition II.

Whether or not the Order of the District Court Denying a Rehearing was Properly the Subject of Appeal, it was a Correct Order and its Affirmance by the Circuit Court of Appeals is unassailable.

1. The petition for rehearing, dated March 11, 1940, was addressed to the sound discretion of the District Court under its general equity powers—not under Section 2 (8) of the Bankruptcy Act.

For the sake of accuracy, in the event it becomes material, we desire to point out that Section 2 (8) of the Bankruptcy Act does not read as it is quoted on Page 10 of Petitioner's brief. It is there quoted as follows:

> "Close estates whenever it appears that they have been fully administered, by approving the final accounts and discharging the Trustees, and reopen them whenever it appears that they were closed before being fully administered."

That, of course, is the way that sub-section read prior to the Chandler Act which became effective June 22, 1938. It now reads:

> "Close estates, by approving the final accounts and discharging the Trustees whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown."

At the time the petition to reopen was filed, March 11, 1940, it was necessary that there be "cause shown" in order to justify the District Court in reopening a closed bankruptcy case, and even then it was within the sound discretion of the Court.

We do not think, however, that the petition to reopen in this case fell under this provision of the Bankruptcy Act. A proceeding under Section 75 (a)-(r) is not, strictly speaking, a bankruptcy proceeding, does not involve an "estate" and, of course, no estate has been "closed" when the proceeding is dismissed.

In the case of *Miller v. Mangus*, 125 Fed. (2d) 507, the Circuit Court of Appeals for the Tenth Circuit said:

> "But a proceeding under sub-sections a-r of 75, 11 USCA, 203 sub-sections a-r does not operate to pass title from the bankrupt to the Trustee or the Bankruptcy Court but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a mortatorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings." Citing: Wright v. Union Central Life Insurance Company 304, U. S. 502, 82 L. Ed. 1490.

If a proceeding were finally dismissed after an adjudication under sub-section (s) the provisions of Section 2 (8) with respect to reopening an estate would, of course, apply, but prior to that time it would not apply. In the instant case, Petitioner has not been adjudicated a bankrupt, nor has any amended petition been filed for this pur-

pose, all of the proceedings being limited strictly to Section 75 (a)-(r).

We think the District Court took cognizance of the petition and considered it under its general equity powers. This is the proper rule, as is announced in the case of *Wayne United Gas Company v. Owens-Illinois Glass Company, supra,* and the Court expressly based its views and conclusions on that case. That case involved a proceeding under Section 77B of the Bankruptcy Act, (now included in Chapter 10) which, like Section 75 (a)-(r) is not, strictly speaking, a bankruptcy proceeding, and also like Section 75 (a)-(r), contains no provision with respect to the circumstances and conditions under which the Court may reopen a closed proceeding. In that case this Court said:

> "But we think the Court has the power, for good reason, to revise its judgments upon seasonable application and before rights have vested on the faith of its action. Courts of law and equity have such power, limited by the expiration of the term at which the judgment or decree was entered and not by the period allowed for appeal, or by the fact that an appeal has been perfected. There is no controlling reason for denying a similar power to a Court of Bankruptcy or for limiting its exercise to the period allowed for appeal. The granting of a rehearing is within the Court's sound discretion . . . the rule which governs the case is that the Bankruptcy Court, in the exercise of a sound discretion, if no interventing rights will be prejudiced by its action, may grant a rehearing upon application diligently made and rehear the case upon the merits; . . ."

It, therefore, seems certain that Petitioner's approach to this case on the basis of whether the District Court abused its discretion in declining to reopen the case under Section 2 (8) is incorrect, the petition for rehearing amounting to nothing more nor less than a motion for a new trial in a law Court or a motion for a rehearing in an equity Court—a matter addressed to the sound discretion of the Court and from which no appeal lies.

We think the Circuit Court of Appeals also proceeded under this theory. Following expressly the *Wayne* case, that Court held that a Bankruptcy Court has power, in the exercise of its sound discretion, to revise its judgments upon seasonable application therefor—and it nowhere cited Section 2 (8) of the Bankruptcy Act as authority for that conclusion. It pointed out that the well known requirements—that the petition for rehearing be filed seasonably, that good reason be shown to reopen the case, etc.,—were "conditions precedent to the power of the Court to exercise its discretion upon the petition", and held that: "If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the Bankruptcy Court." True, the Court stated that, upon appeal, the petitioner carried the burden of showing that the District Court abused its discretion and that petitioner had failed to make such a showing, but the final conclusion was simply: "In view of these and other circumstances disclosed by the record, we think the judgment dismissing the petition was within the sound discretion of the Court below." In effect the appeal was dismissed as to this part of the case but following the modern trend (*Federal Land Bank of Springfield v.*

Hansen, 113 Fed. (2d) 82) an affirmance rather than a dismissal was entered.

2. Even if the propriety of the District Court's action in denying the petition for a rehearing was to be determined under Section 2 (8) of the Bankruptcy Act—and if the decision of the Circuit Court of Appeals is to be considered as affirming the District Court's action taken under this sub-section—the action of the Circuit Court of Appeals in affirming the denial of the petition is proper and unassailable.

The provision that the Court may for "cause shown" reopen estates which have been closed certainly contemplates that some good and sufficient reason shall be given to justify reopening a case. Moreover, in every instance the petition to reopen must be seasonably and diligently filed, and no rights which have vested on the faith of the previous order must be disturbed.

The petition to reopen in this case was filed two years, two months, and seven days after the order of dismissal was entered. It is obvious that this petition was not seasonably and diligently filed. Everyone had a right to suppose at that late date that it was too late for the case to be reopened.

Even if the petition had been seasonably filed, no reason was given for reopening the case. The petition merely recited that under Section 2 (8) of the Bankruptcy Act, the Court had power to reopen estates "closed before being fully administered" (presumably referring to that subsection before it was amended, June 22, 1938) and that

Petitioner's case had not been "fully administered". Even if the law had not been amended, the Petitioner had been adjudged a bankrupt and her estate had been closed, (none of which was true, however) these allegations would not constitute a sufficient basis upon which to reopen the case, since they are mere conclusions. The rule in such a case has always been that the petition to reopen must set out particular property or assets which have not been administered, and must be accompanied by affidavits or other suficient showing to satisfy the Court that the estate was closed prematurely. In *Re Newton* (Missouri 1901) 107 Fed. 429, 46 CCA 399, 6 Am. Bank. Rep. 52. In *Re Graff*, N. Y., 1918, 250 Fed. 997, 163 CCA 247.

Fortunately, we have some decisions interpreting Section 2 (8) as it now reads.

In the case of *In Re Butts* 123 Fed. (2d) 250, Arthur C. Butts, Jr. was adjudicated a bankrupt but after a time his estate was closed and the proceeding dismissed because he refused to post indemnity required by the Court to cover the cost of the proceeding. The Bankrupt's only excuse for failing to furnish the indemnity for more than a year was that he was unable to raise the amount thereof, $19.00, notwithstanding he earned a salary of $300.00 per month. In the meantime a creditor had taken a judgment against the bankrupt in a State Court. The Circuit Court of Appeals held that the District Court did not abuse its discretion in declining to reopen the case at the instance of the Bankrupt, who now tendered the indemnity, particularly since the creditor had changed his position and to reopen the case would prejudice his interest. The Court

also reviewed its previous decision in the case of *In Re Perlman*, 116 Fed. (2d) 49, saying:

> "As this Court said in In Re Perlman . . . what constitutes 'cause' for reopening a closed estate lies primarily within the discretion of the District Judge, and only for plain abuse of discretion should his decision be reversed. We there held that the Act contemplates expedition in calling the first meeting of creditors, and that a bankrupt should not be permitted to delay the meeting for seven months to suit his own convenience. There the bankrupt's excuse for failure to deposit the indemnity was that he was employed by a bank and could not get away during working hours to attend the first meeting of creditors if it should be called."

In the *Perlman* case the Court had likewise declined to disturb the action of the District Court in declining to reopen the case at the instance of the bankrupt.

The petition for rehearing in the case at bar further avers that a "similar duty and right is conferred by the provisions of Section 75 as amended." We have sought in vain for the provision of Section 75 alluded to. It could not be Paragraph (5) of sub-section (s) referring to the reinstatement of cases dismissed on account of the Supreme Court's decision holding the former sub-section (s) unconstitutional, because this case did not fall in that category. The petition also makes some reference to the changed interpretations of the Act, which we think amounts to nothing since the Act meant in the beginning what it meant then and means now.

By the most meticulous examination of the petition, therefore, we find no sufficient reason given to warrant the District Court in reopening the case and, *a fortiori*, nothing to warrant the Circuit Court of Appeals in reversing the action of the District Court for abuse of discretion.

Moreover, in the case at bar rights had vested in Storrs, Respondent's contract purchaser, which it would be manifestly inequitable and unjust to disturb. Storrs' purchase was made,—not only after the thirty days allowed for appeal had expired, but more than a year after the District Court's decree dismissing the farmer debtor proceeding became final. The decree dismissing the proceeding was dated January 4, 1938, the foreclosure sale was confirmed April 21, 1938, and Storrs bought the property April 3, 1939. Surely Storrs had a right at that date to assume that the decree of the District Court had become final and that there was no possibility of its being reopened on a mere motion for a rehearing. He was safe by more than a year from all rights of appeal. (11 USCA 48.). He paid his money, took possession of the property, and has since used it as his own. True, he took it subject to the statutory right of redemption, but that does not defeat this point. He got full ownership in fee subject only to a personal privilege on the part of the mortgagor to reacquire the property within a certain time by paying a certain sum of money. Meanwhile, Storrs was entitled to full possession and enjoyment of the property, including all rents and profits therefrom. He could use the property, dispose of timber, buildings, etc., and even commit waste without any accountability to the former mortgagor holding the right of redemption.

(See Alabama Code, 1940, *Whiteman v. Taber, Johnson v. Davis,* and *Wittmeier v. Cranford*—post this brief.)

Whether, therefore, the District Court in considering the petition to reopen the case was acting under its general equity powers, or under Section 2 (8) of the Bankruptcy Act, its refusal to reinstate the original proceeding was manifestly correct and the Circuit Court of Appeals was correct in affirming it.

Proposition III.

The Statutory Right of Redemption in Alabama is not "Real or Personal Property or any Equity or Right in any such Property" as Contemplated by Section 75(n) of the Bankruptcy Act, Does not come into the Jurisdiction of the Bankruptcy Court upon the Filing of a Farmer Debtor Proceeding under Section 75, and may not be extended by such a Proceeding.

The only question left in this case is whether Petitioner was entitled to any relief under the alternative prayer contained in the petition to reopen which reads as follows:

> "She prays that if she be mistaken in the form of relief, and that if she should refile instead of asking for reinstatement and reopening of her former case, then she prays that her former schedules and information be taken as part of this petition, and she hereby offers to pay such fee or fees as are required under said Act." (R. 24.)

Since this petition was filed one day before the statutory right of redemption expired, the question is presented as

to whether the District Court was warranted in denying the alternative prayer..

In the first place, we do not think the petition and prayer adequate even if a farmer in Alabama had the right to begin a proceeding under Section 75 at any time before his right of redemption after foreclosure expired. The petition is inadequate because it seeks nothing more than the privilege of proceeding anew under sub-section (a)-(r) —the full benefits of which the Petitioner had already received in the original proceeding. It is not a petition seeking to reopen the case in order that the debtor might amend the original petition and ask to be adjudicated a bankrupt under sub-section (s) of Section 75. It seeks only the privilege of traversing again the same ground that was covered in the original proceeding. Having had the benefits of these sub-sections, the matter was *res judicata*. *In re: Suzuki*, 20 Fed. Supp. 900; *In re: Hinshaw*, 33 Fed. Supp. 964.

Nevertheless, even if the petition could be considered adequate to begin a new proceeding under the Act and the matter were not *res judicata*, the alternative prayer of the petition was properly denied because Section 75 is not available to a mortgagor after foreclosure in the State of Alabama. Section 75 is available to a mortgagor after foreclosure and during the period of redemption only where the right of redemption may be said to be "real or personal property, or any equity or right in any such property" as provided under sub-section (n) and such not the case in the State of Alabama.

The redemption right is given by Title 7, Section 727, Code of Alabama, 1940, (unchanged since the petition was filed in this case) which reads as follows:

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in the manner provided in this chapter."

The exact nature and character of the right of redemption is given by Title 7, Section 743 of said Code (unchanged since the petition was filed in this case) which reads as follows:

> "The statutory rights of redemption given or conferred by this chapter are mere personal privileges and not property or property rights. The privileges must be exercised by the person, and in the mode and manner prescribed by the statute. The right or privilege conferred under this chapter is not subject to levy and sale under execution or attachment, nor is it subject to alienation except in the cases provided for in the chapter; but if the right or privilege is perfected by redemption as provided in this chapter, then and not until then, does it become property or rights of property subject to levy, sale, alienation or other disposition, except as is expressly authorized by statute."

That possession must be delivered to the purchaser at the foreclosure sale is shown by Title 7, Section 730, of said Code (unchanged since the petition was filed in this case), reading in part as follows:

> "The possession of the land must be delivered to the purchaser by the debtor, if in his possession or in the possession of anyone holding under him by privity of title, within ten days after written demand for the possession has been made by the purchaser, vendee or his agent . . . Failure of the debtor or anyone holding under him to comply with the provisions of this section forfeits the right of redemption."

The purchaser at the foreclosure sale is entitled to a deed immediately upon making the purchase, and the deed conveys to him full legal title subject only to the right of redemption as hereinabove described. Alabama Code 1940 Title 47, Section 168.

While this would seem to dispose of the question, we think it desirable to refer to a few of the many decisions of the Supreme Court in Alabama with respect to the right of redemption. The cases have uniformly held since the first enactment of this Statute in 1842 that the right of redemption is not property nor any interest in property, but a mere personal privilege. Typical of the statements found in the cases is the following excerpt taken from *Whiteman v. Taber*, 83 So. 595:

> "The nature of the right or privilege of statutory redemption has often been defined, and we have uniformly decided that it is merely a personal privilege, is neither property nor the right of prop-

> erty, is not subject to levy or sale as such under execution, and, as stated, is merely a right or privilege of the debtor."

The decisions are likewise uniform in holding that the purchaser at foreclosure sale gets a fee title subject only to the exercise of the personal privilege to repurchase it. As was stated, in *Cramer v. Watson*, 73 Ala. 127:

> "He is not a mortgagee in possession, but a purchaser, the absolute owner, entitled to rents and profits, and unimpeachable for waste."

Again in *Johnson v. Davis*, 60 So. 799:

> "It is well settled that one in possession of land, as purchaser at a mortgage sale duly and legally made in compliance with the terms of the mortgage, is not chargeable with rent or for waste."

True, the right of redemption passes to the Trustee in Bankruptcy when a mortgagor holding the right of redemption is adjudicated a voluntary bankrupt and the Trustee may exercise it on behalf of the estate, *but it is not a property asset and may not be sold or assigned by the Trustee.* It reaches the hands of the Trustee under what might be denominated an "assignment", the Court holding that the filing of a petition in bankruptcy amounts to an "assignment" of the right of redemption, and one assignment is permitted by the state statute. Moreover, the Trustee has authority under the Bankruptcy Act to take the right of redemption not as a property asset or an interest in property, but solely under that part of Section 70 of the Act (11 USCA 110) giving the Trustee authority to take charge of: "Powers which he (the bankrupt) might

have exercised for his own benefit but not those which he might have exercised solely for some other person".

The manner in which the right reaches the hands of the Trustee is explained in the case of *Johnson vs. Davis, supra*, as follows:

> "When the mortgagor was adjudged a bankrupt, the statute authorized redemption by the assignee of the statutory right and Bankruptcy Act Section 70 vested the Trustee with the title to *all property* of the bankrupt *as well as* certain powers and rights including 'powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person, etc.' It is plain that the mortgagor could have exercised this right for his own benefit prior to his bankruptcy, and it is equally plain that the Trustee became vested with this right, under the Bankruptcy Law upon the adjudication of the bankrupt." (Italics ours.)

That the Trustee may not sell or assign the right of redemption as though it were a property asset is held in the case of *Wittmeier vs. Cranford*, 73 So. 981, from which we quote:

> "The complainant derived no right to redeem under the assignment from the Trustee in bankruptcy . . . While this Court held in the case of Johnson vs. Davis, 180 Ala. 143, 60 Sou. 799, that the Trustee in bankruptcy was an assignee as contemplated by the redemption statute, we also held in the case of Leith vs. Galloway Coal Company, 189 Ala. 204, 66 So. 149 that the right did not extend to the grantee or assignee of the Trustee in bankruptcy."

Viewed from any angle whatever, therefore, the right of redemption in Alabama is neither real nor personal property nor any right, interest, or equity in either, but a mere personal privilege which is not even assignable except in the limited manner authorized by the Statute. The purchaser at the foreclosure sale gets both title and possession, is not accountable for rent, may commit waste or otherwise use or depredate the property with impunity. Accordingly, the right of redemption is not of the character contemplated by the provisions of Section 75 of the Act.

This point becomes perfectly clear when the terms of the Act are carefully examined in the light of the foregoing. Section 75 (n) provides that the filing of a petition shall immediately subject the farmer "and all his property . . . including all real or personal property or any equity or right in any such property, including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired . . ."

It is provided in the next paragraph of the same subsection: "In all cases where, at the time of filing the petition, the period of redemption has not or had not expired . . . the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this Section."

Since to come under the terms of this sub-section the right of redemption must necessarily be property or an interest in property and the right of redemption in Alabama is neither, it follows that even if the petition of March 11, 1940, could have been regarded as sufficient to begin a proceeding under Section 75 the alternative

prayer was properly denied. The Court's record in the case showed that the debtor had lost all property rights in the land listed in her original schedules (her only asset) which had passed by foreclosure to Respondent, and from Respondent by contract of sale to Storrs.

Other provisions of Section 75 show with equal clarity that its terms are available to only those farmers who have both a property right and the right of possession in their farms. It is provided by sub-section (s) that upon the filing of an amended petition asking to be adjudicated a bankrupt the farmer may, at the same time, petition the Court that "all his property . . . be appraised." It is further provided that after the debtor's exemptions have been set aside, etc., the Court "shall further order that the *possession* under the supervision and control of the Court of any part or parcel or all of the remainder of the debtor's property *shall remain in the debtor*, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances." (Italics ours.) It is then provided that upon certain conditions being complied with the Court shall stay all judicial proceedings, etc., against the debtor "or any of his property" for a period of three years and that during the three years the debtor shall be permitted to *"retain possession* of all or any part *of his property"*, (Italics ours) provided he pays a reasonable rental semi-annually to be fixed by the Court. The rental is to be the amount and kind that is customary in the community where the property is located.

From the foregoing it is clear that Section 75 is limited in its application with respect to debtors whose property

has been sold at foreclosure sale to those cases where, under State law, the debtor still has a property interest and the right to possession in the farm property which has been foreclosed upon. Obviously, Petitioner in the case at bar does not have a property interest in the farm which she seeks to continue as the subject of litigation. She does not have a right to possession and, indeed, would have lost the personal privilege of redemption had she not surrendered possession to the purchaser at foreclosure sale. Therefore, she could not "remain" in possession nor could she pay a "rental". Manifestly, therefore, Section 75 has no application, and may not be availed of in this case.

Petitioner in her brief places great reliance upon an observation made by this Court in deciding the case of *Wright v. Logan* . . . U. S. . . . 86 L. Ed. Advance Opinions 443 (October term, 1941, No. 229) as follows:

> "It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under Section 75 continued to be a part of their assets, subject to administration by the Bankruptcy Court for Section 75 (n) subjects all of the farmer debtor's assets, specifically including rights of redemption to the jurisdiction of the Bankruptcy Court and provides 'the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this Section.'"

This observation was absolutely correct in the case where it was made. The case involved the right of redemption after foreclosure under the law of the State of

Illinois. In that State the mortgagor is given the right to redeem for twelve months after the date of foreclosure sale and if the right is not exercised creditors are given a similar right for an additional three months. Illinois Revised Statutes 1941, Chapter 77, Sections 18-20. *The mortgagor retains title and possession of the land until the period of redemption has expired and a deed is delivered.* This has been many times held by the Supreme Court of that State as will be illustrated by a few excerpts from decisions as follows:

In *Williams vs. Williston*, 315 Ill. 183, 146 N. E. 143, it is said:

> "The purchaser of land at a master's sale pursuant to a decree of foreclosure is not by his purchase or the certificate of sale issued to him vested with the title to the land, but acquires the right to receive the redemption money, if redemption is made within the time and in the manner prescribed by the statute, or, in case no redemption is so made within that period, then to receive a master's deed. Sutherland v. Long, 273, Ill. 309, 112 N. E. 660. A master's certificate of sale does not purport to convey title, but describes the premises purchased, the amount paid therefor, and the time when the purchaser will be entitled to a deed if no redemption be made. Smith's Stat. 1923, c. 77, Sec. 16; Lightcap v. Bradley, 186 Ill. 510, 58 N. E. 221; Allison v. White 285 Ill. 311, 120 N. E. 809. Both before and after the sale under a foreclosure decree the owner of the equity of redemption has the same estate in the land. Lightcap v. Bradley, supra; Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45; Aetna Life Ins. Co. v. Beckman, 210 Ill. 394, 71 N. E. 452."

In the earlier case of *Aetna Life Ins. Co. v. Beckman*, 210 Ill. 394, 71 N. E. 452, it is said:

> "Under our law, after a foreclosure sale, the owner of the equity of redemption still has precisely the same estate that he had prior to the decree of foreclosure. Stephens v. Illinois Mutual Ins. Co., 43 Ill. 327; Rockwell v. Servant, 63 Ill. 424; Lightcap v. Bradley, 186 Ill. 510, 58 N. E. 221; Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45."

And in the more recent case of *Chicago Joint Stock Land Bank vs. McCambridge*, 343, Ill. 456, 175 N. E. 834, it is said:

> "Both before and after a sale under a foreclosure decree the owner of the equity of redemption has the same estate in the land. Williams v. Williston, 315 Ill. 178, 146 N. E. 143; Aetna Life Ins. Co. v. Beckman, 210 Ill. 394, 71 N. E. 452. The only qualification of his estate is that the amount and time of the redemption have become absolutely fixed by the decree and sale, and his estate will be absolutely divested if he fails to redeem within the alloted time. Stephens v. Illinois Mutual Ins. Co., 43 Ill., 327. Until the conveyance by the master the mortgagor or his grantee is entitled to the possession and use of the premises to the same extent as before the sale, and may convey them as he chooses, but upon such conveyance by the master, the grantee becomes vested with the complete title."

In this connection we respectfully call the Court's attention to the case of *In re Duffy*, 9 Fed. Supp. 166, decided in 1934 by the Federal District Court for the Eastern Dis-

trict of Illinois. That was a proceeding under Section 75 of the Bankruptcy Act brought by an Illinois farmer whose property had been sold under foreclosure in which the mortgagee creditor raised the point as to whether the right of redemption in Illinois was "property" within the purview of Section 75. The Court made an extensive review of the Illinois decisions reaching the following conclusion:

> "I conclude . . . that the right of the bankrupt to redeem at the time he filed his petition, constitutes a property right within the meaning of Section 75 of the Bankruptcy Act."

Manifestly this Court was correct in the *Wright-Logan* case, and the District Court was correct in the *Duffy* case in reaching the conclusion that under the law of Illinois a farmer may avail himself of Section 75 at any time within the period allowed for redeeming his farm property after foreclosure. This conclusion, however, but serves to strengthen our point that under Alabama law where the mortgagor after foreclosure has no property right or interest in the farm, no right to possession, and no right to collect rents or complain about waste, such a mortgagor does not have such a right in the property as is contemplated by the provisions of Section 75.

The provisions of Section 75 were clearly not intended to alter or change the rights of parties under the redemption laws of the several States; they were only intended to "extend" the period of redemption or the time within which redemption might be effected. That this is true is illustrated by the fact that Section 75 in no way at-

tempted to write a redemption statute into the laws of a State which does not already have one. The Section, as applied to a mortgagor after foreclosure, was intended merely to give the debtor a longer period of time within which to meet his obligations under redemption laws as they existed in the several States where, under those laws, the mortgagor had property rights after foreclosure of the character described in said Section.

Consider for a moment some of the anomalous situations and insurmountable barriers which would inevitably be encountered were an attempt made to give Section 75 application to a mortgagor after foreclosure in Alabama:

1. The purchaser at foreclosure gets both title and possession. Therefore, unless the Alabama statute is to be considered as amended or set aside in part by Section 75, the debtor could not be given possession of the property.

2. Under Section 75 it is contemplated that the debtor shall not only "retain possession" but pay a reasonable rental during a possible three-year tenure. As pointed out above, this cannot be done since the purchaser at foreclosure sale, as owner, is entitled to both possession and the rents and profits; but, if it could be done we would have the anomaly of a debtor paying to the Court for the benefit of the owner, rent which is already the absolute property of the owner.

3. Under the Alabama law the purchaser at foreclosure sale, as owner, is entitled to deal with the

> property just as though no statutory right of redemption existed. He may sell timber, minerals, etc., commit waste if he so desires, and exercise all other rights of ownership without being accountable in any way to the person who owned the property prior to foreclosure. Moreover, he may place improvements upon the property without the consent of the former owner or anyone else, and if the former owner redeems he must pay in addition to other amounts provided by statute the full value of the improvements so placed upon the property. (Ala. Code, 1940, Title 7, Sec. 732.)

Since it is clearly impossible, without setting aside State laws, to give the mortgagor after foreclosure any of the salient benefits provided by Section 75 for farmer debtors—and since it is also clear that the debtor has no title, property interest, or equity of any character in the farm property after foreclosure—the conclusion is inescapable that Section 75 was not intended to apply to a situation such as obtains in Alabama.

We think the Congress, in enacting Section 75 and providing for its application in cases where foreclosure has been had but the right of redemption has not expired, contemplated the large group of States in which the mortgagor retains some property right and the right to possession and use of the farm property during the period of redemption, and perhaps, also, the smaller group of States in which the mortgagor retains, after foreclosure, some property interest and certain privileges provided by Statute, although not retaining possession. It seems conclusive, however, that the Alabama situation was not contemplated

and cannot be brought within the purview of either the letter or the spirit of the Act.

CONCLUSIONS.

1. The petition of March 11, 1940, filed in the District Court by the farmer debtor, Petitioner here, seeking to reopen the proceeding under Section 75 of the Bankruptcy Act, which had been dismissed by an order of January 4, 1938 (effective January 20, 1938), was addressed to the sound discretion of the Court and the order of August 6, 1940, denying the petition and refusing to reopen the case was not appealable. Therefore, this Court should not review the action of the Circuit Court of Appeals in affirming the order of August 6, 1940.

2. Even if the order of August 6, 1940, denying the petition to reopen the case should be considered appealable it was a correct order because the petition was not seasonably filed, gave no good reason for reopening the case, and rights had vested in Storrs, an innocent third party, which it would be inequitable and unjust to disturb. Accordingly, the Circuit Court of Appeals correctly affirmed the order and its action should be affirmed by this Court.

3. The alternative prayer of the petition of March 11, 1940, asking that it be considered as a refiling of the farmer debtor proceeding was properly denied because (1) the petition was inadequate to begin a proceeding under

Section 75 of the Bankruptcy Act, and (2) Section 75 is not available to a mortgagor after foreclosure in the State of Alabama.

Respectfully submitted,

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I, Thomas Harvey Hedgepeth, hereby certify that I have on this the 27th day of November, 1942, mailed, by registered mail, postage prepaid, copies of the foregoing brief to Hon. Walter J. Knabe, Bell Building, Montgomery, Alabama, and Hon. Jack Crenshaw, First National Bank Building, Montgomery, Alabama, Attorneys for Petitioner.

Thomas Harvey Hedgepeth

SUPREME COURT OF THE UNITED STATES.

No. 172.—October Term, 1942.

Minnie Reese Richardson Wragg, Petitioner, vs. Federal Land Bank of New Orleans.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

After her petition for a composition or extension of her debts in a farmer-debtor proceeding under § 75 of the Bankruptcy Act, 11 U. S. C. § 203, had been dismissed, petitioner applied to reopen the proceeding or, in the alternative, to be permitted to institute a new proceeding under § 75. The questions for our decision are whether the courts below erred in denying her application and whether, at the time of her application, her right as mortgagor to redeem Alabama real estate after its sale on foreclosure of the mortgage was such that it can be administered by the court in a § 75 proceeding.

In 1937, after respondent mortgagee had obtained a decree of foreclosure, but before foreclosure sale, petitioner filed a petition under § 75 seeking a composition or extension of her debts. The bankruptcy court referred the proceeding to a conciliation commissioner; petitioner filed proposed terms of composition or extension to which respondent filed objections; the conciliation commissioner then recommended that the offer be not approved on the ground that it did not contain an equitable and feasible method of liquidating respondent's claim and of securing petitioner's financial rehabilitation.

The court confirmed the report of the conciliation commissioner, holding that petitioner was not entitled to amend her petition so as to proceed under §75(s), and directed that the proceeding be dismissed as of January 19, 1938. Petitioner's motion for leave to appeal to the Circuit Court of Appeals in forma pauperis and her petition for certiorari to this Court were denied. 95 F. 2d 252; 305 U. S. 596. After the farmer-debtor proceeding was dismissed respondent purchased the mortgaged property at a

foreclosure sale, which was confirmed in April, 1938. Nearly a year later, respondent contracted to sell the property to a third party, the contract stipulating that it was "subject to the statutory right of redemption following foreclosure if any exists".

Alabama law allows to the mortgagor a two-year redemption period after foreclosure sale. Title 7, § 727, Code of Alabama, 1940. On March 11, 1940, one day before the expiration of this period,[1] petitioner filed her application in the bankruptcy court. It referred to her prior § 75 proceeding, alleging that her property had not been fully administered in that proceeding and that she was entitled to further relief, especially in the light of the changed conditions and interpretation of the Act (obviously a reference to the decision in *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, decided December 4, 1939). She accordingly prayed that the case be reopened and reinstated. In the alternative she asked that, if she were entitled only to file a new petition, then her former schedules should be deemed a part of her petition, and she offered to pay such filing fees as the statute requires.

The district court thought that even though the dismissal of the original proceeding was erroneous under the rule subsequently announced in the *Bartels* case, there were no circumstances sufficient to persuade the court, in the exercise of its discretion, that the proceeding should be reopened upon an application filed more than two years after it had been dismissed. The court accordingly denied the application. 34 F. Supp. 374. The Circuit Court of Appeals for the Fifth Circuit affirmed. 125 F. 2d 1003. We granted certiorari, 317 U. S. —, the questions raised being of importance in the administration of the Bankruptcy Act.

We do not differ with the conclusion of both courts below that it was within the sound discretion of the bankruptcy court to decline to reopen the original order of dismissal. A motion to reopen a proceeding may not properly be substituted for an appeal from its decision. See *Wayne Gas Co.* v. *Owens Co.*, 300 U. S. 131, 135; *Pfeister* v. *Illinois Northern Finance Corp.*, decided November 16, 1942, page 8. But the dismissal of the original proceeding and denial of the application to reopen it were not bars to a new proceeding under § 75 to secure whatever relief the

[1] Petitioner contends that on March 11, 1940, nearly six weeks of the period of redemption remained. We find it unnecessary to determine the correctness of this contention.

Act would afford with respect to petitioner's remaining interest in the mortgaged property. We find no intimation in the language and purposes of the Act that an unsuccessful earlier proceeding would preclude a new petition so long as the farmer retains an interest which could be administered in a proceeding under § 75.

Respondent argues that under Alabama statutes and decisions the statutory right of redemption after foreclosure is defined as a "personal privilege" rather than as "property or property rights" (Title 7, § 743), and hence is not within the jurisdiction of the bankruptcy court in a farmer-debtor proceeding. But § 75 prescribes its own criteria for determining what property interests may be brought within the jurisdiction of the court. In the interpretation and application of the Bankruptcy Act as in the case of other federal statutes, federal not local law applies. *Prudence Corp.* v. *Geist*, 316 U. S. 89, 95 and cases cited. It is for the bankruptcy court to determine, by reference to the provisions of the bankruptcy statute, what rights created by state law—regardless of the characterization which may be applied to them by state statutes and decisions—are within the jurisdiction of the bankruptcy court. *United States* v. *Pelzer*, 312 U. S. 399, 402-03.

Under § 168 of Title 47 of the Alabama Code of 1940, the purchaser at foreclosure sale is entitled to a deed immediately upon making the purchase and the deed conveys to him full legal title subject only to the right of redemption. By §§ 727 and 743 of Title 7, the mortgagor retains a right of redemption, which is "not subject to alienation", save as it may be transferred or assigned to an assignee who may redeem. *Estes* v. *Johnson*, 234 Ala. 191; *Crawford* v. *Horton*, 234 Ala. 439, 444. Section 75(n) of the Bankruptcy Act confers jurisdiction over the debtor's "right or the equity of redemption where the period of redemption has not or had not expired". *Wright* v. *Logan*, 315 U. S. 139, 142; and see *State Bank of Hardinsburg* v. *Brown*, decided November 16, 1942, pp. 3-5. Looking at the scope and purpose of § 75, we think petitioner's interest in the mortgaged property, whether it be denominated a property right or a privilege of redemption, is an interest intended to be subject to the court's jurisdiction and is capable of administration in a farmer-debtor proceeding. See *Mangus* v. *Miller*, 317 U. S. —.

It follows that petitioner's right of redemption was within the jurisdiction of the court; that she was entitled to initiate a new

proceeding for the administration of the property in farmer-debtor proceedings, and to ask that her petition and schedules be allowed to stand as the petition and schedules in such a proceeding.

Reversed.

Mr. Justice BLACK took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.